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No. 89-1817

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In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTIONS PRESENTED

1. Does a plaintiff arrested without a warrant and allegedly held without receiving a constitutionally prompt probable cause determination possess article III standing for purposes of obtaining an injunction requiring a public entity to provide warrantless arrestees with constitutionally prompt probable cause hearings when (a) the time in which to provide plaintiff with a constitutionally prompt hearing has passed and (b) there is no allegation that the plaintiff will again be subjected to the allegedly unconstitutional practices of the public entity?

2. Where a state, pursuant to this Court's invitation in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975) incorporates probable cause determinations for warrantless arrestees into existing pre-trial procedures such as arraignment that afford the arrestee additional constitutional protections, must the additional time necessary to provide these more extensive proceedings be factored into any determination as to whether the probable cause hearing is sufficiently "prompt" under *Gerstein*?

LIST OF PARTIES

The parties to the proceeding below were the petitioners County of Riverside and Riverside County Sheriff Cois Byrd and respondents Donald Lee McLaughlin, John E. Jones, Diane Simon, Michael Scott Hyde, Bret Hale, David Keiser, Sharon Sweeney and Lavonne Hinds, on behalf of themselves and as representatives of a similarly situated class.

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet., App. pp. 1-10) is reported at 888 F.2d 1276. The memorandum order of the United States District Court for the Central District of California granting a preliminary injunction in the case (Pet., App. pp. 11-13) is not reported.

JURISDICTION

The judgment of the Ninth Circuit (Pet., App. pp. 1-10) was entered on November 8, 1989. The petition for rehearing with a suggestion for rehearing en banc was denied on April 10, 1990. (Pet., App. p. 15.) On April 30, 1990, the Ninth Circuit granted petitioners' emergency motion for stay of mandate for 30 days pending the filing of a petition for writ of certiorari. (Pet., App. p. 16.) The petition for certiorari was filed on May 17, 1990, and granted on October 1, 1990. The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. section 1254(1).

STATUTES INVOLVED

The following statutes are involved in the case and, due to their length, are set forth verbatim in the Appendix hereto.

California Penal Code sections 825, 859, 859b, and 991

United States Constitution, Article III, sections 1 and 2

United States Constitution, Fourth Amendment

STATEMENT OF THE CASE

A. Overview Of The Action.

This is a class action suit under 42 U.S.C. section 1983 seeking injunctive and declaratory relief with respect to the manner in which the County of Riverside provides warrantless arrestees with probable cause hearings following arrest. Specifically, plaintiffs sought an injunction requiring the County of Riverside and its Sheriff, Cois Byrd, to provide warrantless arrestees with probable cause hearings within 36 consecutive hours of arrest. The County opposed the motion for preliminary injunction, arguing that (1) the named plaintiffs lacked standing under article III of the United States Constitution to pursue an action for injunctive relief since, according to the allegations of the complaint, their rights had already been violated and they would in no way benefit from the relief sought; and (2) the County provided warrantless arrestees with a constitutionally "prompt" probable cause hearing within two days of arrest excluding weekends and holidays, at the time of arraignment as required by California Penal Code sections 991 and 825. The district court granted the preliminary injunction and the Ninth Circuit affirmed the order, finding that the named plaintiffs possessed article III standing to pursue the action for injunctive relief and that the two day time period provided by California Penal Code sections 991 and 825 for providing probable cause determinations at arraignment was not "constitutionally prompt" within the meaning of this Court's decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975).

B. The Initial Proceedings.

On August 24, 1987, plaintiff Donald Lee McLaughlin filed a Complaint for declaratory and injunctive relief on behalf of himself and "all others similarly situated" in the United States District Court for the Central District of California. CR 1.[1] Named as defendants were the County of Riverside and Cois Byrd, as Sheriff of the County of Riverside and individually. *Id.* The Complaint purported to state a claim under 42 U.S.C. section 1983 for violation of civil rights, predicated upon the County of Riverside's alleged failure to provide "prompt probable cause" determinations for arrestees. The Complaint requested "an order and judgment requiring that defendants and the County of Riverside provide "in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings." *Id.* [p. 5]. The Complaint asserted that Mr. McLaughlin could properly represent the interest of the class members in that he was currently incarcerated in the Riverside County Jail and had not received a probable cause determination.

On October 13, 1987, plaintiffs moved to certify the class. CR 5. On October 16, 1987, plaintiffs filed a First Amended Complaint. CR 6. On November 20, 1987, the County of Riverside and Sheriff Byrd moved to dismiss the First Amended Complaint on the grounds that the named plaintiff lacked standing to prosecute the lawsuit in that there were no allegations that the named plaintiff

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[1] CR refers to the docket number assigned to the document in the district court. References to the Joint Appendix filed in this Court will be denominated "JA".

would again be subject to the allegedly unconstitutional conduct, i.e., detention without a probable cause hearing, at any time in the future, citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660 (1983). CR 14. In light of the pending motion to dismiss, the district court continued the hearing on the motion to certify the class. CR 12. On December 4, 1987, plaintiff filed his opposition to the motion to dismiss the First Amended Complaint. CR 21. The motion to dismiss was taken under submission on December 21, 1987. CR 22.

The district court did not rule on the motion to dismiss the First Amended Complaint. CR 27. Rather, on July 25, 1988, pursuant to plaintiffs' request, the court accepted for filing a Second Amended Complaint. 1 JA 2; CR 28. The Second Amended Complaint alleged that plaintiff Donald Lee McLaughlin was arrested without a warrant, taken to Riverside County Jail, and was not arraigned for five days. 1 JA 3. It added as plaintiffs, Johnny E. Jones, Diana Rae Simon, and Michael Scott Hyde, asserting that they had been arrested without warrants, taken to Riverside County Jail, and "did not receive and have not received prompt probable cause and bail hearings and are still in custody." 1 JA 3. The Second Amended Complaint also added as defendants Brett Hale, David Keiser, who were "pre-trial detainees in Riverside County Jail."[2] The new complaint further asserted

[2] The Second Amended Complaint also added plaintiffs Sharon Sweeney and Lavonne Hinds who were alleged to be "pregnant women prisoners," in an attempt to assert a new cause of action predicated upon alleged inadequate conditions for such prisoners. 1 JA 3. The district court subsequently

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that "[a]t all times plaintiffs who were arrested without warrants were held in Riverside County Jail without prompt probable cause hearings, bail hearings or arraignment," that defendants "are violating Constitutional standards for prompt post arrest, judicial determinations of probable cause, and for bail and for arraignment" in that "Plaintiffs, but not defendants, believe there should be *no delay* between the time of arrest and presentation to a magistrate that is not necessary." 1 JA 5-6. The prayer requested issuance of an injunction directing the defendants to "provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings. . . . " 1 JA 7.

In light of the filing of the Second Amended Complaint, the motion to dismiss the First Amended Complaint was taken off calendar. CR 32. On August 23, 1988, defendants filed an answer to the Second Amended Complaint. CR 36. On November 14, 1988, the court granted plaintiffs' motion to certify the class. CR 41, 42.[3]

C. The Motion For Preliminary Injunction.

On March 3, 1989, plaintiffs filed a motion for preliminary injunction. 1 JA 16; CR 42. Based upon data

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refused to certify the class for purposes of these claims or the basic jail condition claims of the plaintiffs, thus limiting the action to the *Gerstein* claim. See CR 41, 42.

[3] As previously noted, the class was certified only with respect to those prisoners purportedly held without receiving a prompt probable cause determination. CR 41, 42. The court did not certify the action for purposes of pursuing either the jail conditions or treatment of pregnant prisoners issues. *Id.*

collected almost a year and one-half earlier, in 1987, plaintiffs asserted that persons arrested without warrants in the Central Riverside County Jail were not receiving a prompt probable cause determination upon completion of the administrative steps necessary to complete an arrest as required by *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975). Specifically, plaintiffs asserted that warrantless arrestees arrested "on a Thursday or a Friday do not see a Judge (or are not released for excessive detention before their first arraignment) until, at least, the following Monday or Tuesday, a delay of 72 hours or, on three-day weekends, 96 hours or more. . . . " 1 JA 17. Plaintiffs requested the court to issue a preliminary injunction requiring inmates in the Central Riverside County Jail to receive a probable cause determination within 36 hours of arrest, to be conducted by an appropriate judicial officer. 1 JA 21. The 36-hour time frame was based upon a stipulated order entered in a separate case before the same judge involving another County. 1 JA 22.

On April 7, 1989, defendants filed their opposition to the motion for preliminary injunction. 1 JA 86. Defendants argued that the named plaintiffs lacked standing in the lawsuit because there was no evidence that any of the named plaintiffs would again be subject to the allegedly unconstitutional policy and practice of the County of Riverside which formed the basis of their complaint. Specifically, there was no evidence to indicate that these individuals would again be arrested and subjected to detention without a prompt probable cause hearing. Defendants further argued that, based upon data collected in March 1989, prisoners detained in the Central Riverside County Jail were receiving a prompt probable

cause determination consistent with *Gerstein v. Pugh*. Pursuant to the California Supreme Court's interpretation of *Gerstein*, as well as consistent with California Penal Code sections 825 and 991, inmates were advised prior to arraignment of their right to have a probable cause hearing at that time. 1 JA 105-116; 120-129. Arraignments, in turn, were conducted within two days of arrest, i.e., Monday through Friday, excluding Saturdays, Sundays and holidays. 1 JA 120-121; 125-126. Defendants also offered booking records (2 JA 170-275) demonstrating that the majority of arrestees were released within 24 hours of arrest and that individuals held beyond the maximum two day statutory period without receiving arraignment were the exception and not the rule. 2 JA 161-164; 276-277.

On April 13, 1989, plaintiffs filed their reply to the opposition to the motion for preliminary injunction. 2 JA 278. Plaintiffs reiterated their argument that under *Gerstein*, a probable cause determination must be made within hours of arrest, and specifically asserted that felony arrestees in Riverside County could not obtain probable cause hearings until 14 days after arrest. 2 JA 281.

On April 17, 1989, the motion for preliminary injunction came on for hearing before the district court. CR 54. The motion was taken under submission. *Id*. On April 19, 1989, the court issued a preliminary injunction directing inmates at the Central Riverside County Jail to be taken before a "judge, Magistrate, Court Commissioner, or other authorized judicial officer" for a probable cause determination within 36 hours of arrest. 2 JA 332-334. Defendants were given 60 days in which to comply with the order. 2 JA 334. The order further stated that the court

would retain jurisdiction to review procedures adopted by the County pursuant to the order, and to monitor implementation of the procedures in the Riverside County branch jails "as soon as practicable." 2 JA 333-334.

D. Appeal To The Ninth Circuit

On May 11, 1989, defendants filed a notice of appeal from the district court's order granting the preliminary injunction. CR 56. Defendants then moved for a stay pending appeal in the district court, which was denied. Defendants then requested the Ninth Circuit to grant a stay pending appeal, and on June 20, 1989, the Ninth Circuit granted the request for stay and expedited the appeal.[4]

On November 8, 1989, in a published opinion, the Court of Appeals affirmed the order granting a preliminary injunction, expressly finding that under *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983), the named plaintiffs had standing to prosecute the action for injunctive relief since, at the time the complaint was filed, they were still in custody and thus still suffering injury as a result of the defendants' alleged unconstitutional action. The Court additionally found that providing probable cause determinations within the

[4] On appeal this action was consolidated with *McGregor v. County of San Bernardino*, Ninth Circuit Case No. 89-55542, a case arising from a virtually identical injunction issued as to the County of San Bernardino.

arraignment time frame of two days provided by California Penal Code sections 825 and 991 was not in accord with *Gerstein*'s requirement that a determination be made promptly after arrest, i.e., upon completion of the administrative steps incident to arrest such as booking and completion of paper work.[5] This Court then granted certiorari.

SUMMARY OF ARGUMENT

1. The motion for preliminary injunction should have been denied because the named plaintiffs lacked article III standing to prosecute the instant action. In *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, this Court reaffirmed the principle that in order to establish standing to assert a claim for injunctive relief under article III of the Constitution, a plaintiff must establish that he or she will again be subject to the very conduct that the injunction seeks to prevent and will thus benefit from the relief sought. The Court expressly rejected the notion that the mere fact that the plaintiff suffered an injury as a result of the alleged unconstitutional actions of a defendant provided a basis for seeking injunctive relief to prevent future deprivations of rights. In the

[5] The Ninth Circuit reversed the district court's order granting a preliminary injunction as to the County of San Bernardino insofar as it required an arrestee to be present at the time the probable cause determination takes place. The Court found that the presence of the arrestee was not required at the probable cause hearing. That issue has not been presented to this Court by the parties.

instant case, the Second Amended Complaint specifically alleged that the named plaintiffs *did not* receive *prompt* probable cause determinations and requested the court to issue an order requiring the County of Riverside to provide prompt probable cause hearings. Yet, it is manifest that the named plaintiffs had no "personal stake" in the action for purposes of the equitable relief sought. Once they had been denied a *prompt* probable cause hearing, their rights had already been violated and to the extent they sought injunctive relief to prevent *future* violations, they would have to allege that they would again be subject to warrantless arrest without receiving a prompt probable cause determination. While the Ninth Circuit determined that it was simply enough that the named plaintiffs were all in custody and hence suffering injury at the time the complaint was filed even if injunctive relief could not remedy that injury, as noted above, in *City of Los Angeles v. Lyons*, this Court rejected precisely that theory. Here, as in *Lyons*, the constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as to the named plaintiffs, concluded at the time the complaint was filed, regardless of whether any injury lingered on. Any relief sought was solely prospective in nature. If the named plaintiffs had not yet received a prompt probable cause determination, the County of Riverside could not give them one because, under plaintiffs' theory of the case, the time in which to do so had *already* expired. Absent the allegation that they would again be subject to a warrantless arrest without probable cause and be held an impermissibly lengthy time without receiving a probable cause determination, the named plaintiffs clearly lacked standing to prosecute an action

for injunctive relief under article III. Moreover, the fact that this action has been brought as a class action does nothing to confer article III standing on the plaintiffs since, as this Court has repeatedly held, if the named plaintiffs do not possess article III standing to prosecute the action, they may not seek relief on behalf of themselves or any other member of the class. *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 675, 38 L.Ed.2d 674 (1974); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40, n. 20, 96 S.Ct. 1917, 1925, n. 20, 48 L.Ed.2d 450 (1976). Nor is the "capable of repetition, yet evading review" doctrine applicable to the instant case. That doctrine applies only where the plaintiff possessed standing in the first place and the claim, by its nature, will be moot before the matter is resolved on appeal. As this Court noted in *Lyons*, it has no application where, as here, the plaintiff lacked standing to begin with and any claim can itself be reviewed in the context of a damage action. Plainly, the named plaintiffs lacked article III standing to prosecute the instant action for injunctive relief and the motion for preliminary injunction should have been denied.

2. The motion for preliminary injunction should have been denied, because providing warrantless arrestees with probable cause determinations at the time of arraignment within two days of arrest, excluding weekends and holidays, meets the requirements of the Fourth Amendment. In *Gerstein v. Pugh*, 420 U.S. 103, this Court found that individuals arrested without a warrant were entitled to a prompt probable cause determination as a prerequisite to extended pre-trial detention. However, the Court declined to mandate a specific timetable

for providing probable cause determinations to arrestees, expressly inviting the states to exercise flexibility in incorporating the probable cause determinations into existing pre-trial procedures, such as arraignment. In *Gerstein* and later in *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984), the Court suggested that probable cause determinations held during pre-trial proceedings taking place anywhere from two days to six full days after arrest were permissible under the Constitution. Consistent with *Gerstein*, in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975), the California Supreme Court found that probable cause determinations would be required at the time of arraignment, i.e., within two days of arrest – a requirement codified by the California Legislature in Penal Code section 991. The County of Riverside provides the opportunity for probable cause determinations to warrantless arrestees at the time of arraignment, within two days of arrest, in compliance with California Penal Code sections 991 and 825. This is precisely the sort of incorporation of probable cause determinations into existing pre-trial procedures that this Court invited in *Gerstein*. To require probable cause determinations to be provided to warrantless arrestees based solely upon the time necessary to complete paper work attending the arrest, effectively prevents a public entity from merging a probable cause hearing into any pre-existing judicial procedure. As this Court has recognized, providing additional constitutional protections in the context of such hearings necessarily requires additional time. In California, and specifically in the County of Riverside, these hearings are delayed no longer than necessary to allow hearing before a full judicial officer at the

time of arraignment, with the additional protections these more elaborate proceedings involve. While an intervening weekend or holiday may delay arraignment, as this Court's decisions in *Gerstein* and *Schall* make plain, the Fourth Amendment permits a state to delay a probable cause hearing for a reasonable period of time in order to provide an arrestee with greater constitutional protections than available in an ex parte proceeding. Plainly, a state or other public entity has a legitimate interest in avoiding needless multiplicity of pre-trial criminal proceedings which unnecessarily consume judicial time and resources that may slow the process to the detriment of all who pass through it without providing any concomitant benefit to any category of arrestee. Nor is there anything illegitimate about a public entity's desire to provide warrantless arrestees with greater procedural and substantive protections at a hearing that offers benefits beyond a simple determination of probable cause. Absent compelling evidence that the pre-trial detention in question is predominantly punitive in nature, a federal court should not substitute its judgment for that of local officials as to the appropriate time and manner in which probable cause determinations are to be made. *Bell v. Wolfish*, 441 U.S. 520, 539, 99 S.Ct. 1861, 1874, 60 L.Ed.2d 447 (1979). Indeed, these are precisely the sort of policy decisions that under our system of federalism are most properly delegated to local officials and federal courts must exercise particular caution when attempting to intervene in the day-to-day operation of local criminal justice systems. *Rizzo v. Goode*, 423 U.S. 362, 370-379, 96 S.Ct. 598, 603-608, 46 L.Ed.2d 561 (1976); *O'Shea v. Littleton*, 414 U.S. 448, 502, 94 S.Ct. at 679. Since the County

of Riverside was fully in compliance with the dictates of the Fourth Amendment as interpreted by this Court in *Gerstein*, the motion for preliminary injunction should have been denied.

ARGUMENT

I.

THE NAMED PLAINTIFFS LACK ARTICLE III STANDING TO SEEK INJUNCTIVE RELIEF IN FEDERAL COURT BECAUSE THE ALLEGATIONS OF THE COMPLAINT MAKE IT CLEAR THAT ISSUANCE OF THE INJUNCTION SOUGHT COULD AT NO POINT HAVE REMEDIED THE ALLEGED PAST CONSTITUTIONAL VIOLATIONS THAT FORM THE BASIS OF THE COMPLAINT.

As this Court has observed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450. The "concept of standing is part of this limitation." *Id.* The essential inquiry for purposes of determining whether there is standing to prosecute an action under article III is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343, 354 (1975); emphasis in original. To determine whether a plaintiff has a "personal stake" in the lawsuit so as to

confer standing under article III, the "relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself *that is likely to be redressed by a favorable decision*. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 38, 96 S.Ct. at 1924; emphasis added. Indeed, it is only through insistence that the plaintiff prosecuting an action possess a "personal stake" in the outcome that the "concrete adverseness which sharpens the presentations of issues upon which the court so largely depends for illumination of difficult . . . questions" can be assured. *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663, 678 (1962).

Thus, standing under article III is a threshold determination going squarely to the ability of a federal court to adjudicate a dispute. As this Court has recognized, this is true regardless of whether the action is brought by an individual or on behalf of a class. As the Court observed in *Simon*: "That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 40, fn. 20, 96 S.Ct. at 1925, fn. 20, quoting *Warth v. Seldin*, 422 U.S. 490, 502, 95 S.Ct. 2197, 2207, 45 L.Ed.2d 343. See also *Sosna v. Iowa*, 419 U.S. 393, 403, 95 S.Ct. 553, 559 (1974) ["A named plaintiff in a class action must show that the threat of injury in a case such as this is 'real

and immediate,' not 'conjectural' or 'hypothetical.' A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court"].

This case involves a claim for injunctive relief by named plaintiffs in a class action who, at the time the complaint was filed and the class certified, clearly lacked any "personal stake" in obtaining the injunctive relief sought. Specifically, the Second Amended Complaint alleged that the named plaintiffs were "arrested without warrants, were taken to the Riverside County Jail, did not receive and have not received prompt probable cause and bail hearings and are still in custody." 1 JA 3. The prayer of the Second Amended Complaint then requests an "order and judgment requiring that the defendant and the County of Riverside provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings. . . . " 1 JA 7. In sum, the Second Amended Complaint alleges the named plaintiffs *did not* receive prompt probable cause determinations and asks the Court to issue an order requiring the County of Riverside to provide prompt probable cause hearings.

The problem with plaintiffs' position is, however, that once they did not receive a *prompt* probable cause hearing, their rights had already been violated, i.e., no prompt determination had taken place. Because plaintiffs had already allegedly been held without a prompt probable cause determination, the equitable relief sought would in no way be able to redress *their* injuries – the alleged transgression had already occurred. To the extent they seek injunctive relief to prevent *future* violations, they would have to allege that they would again be

subject to warrantless arrest and prolonged detention without receiving a prompt probable cause determination. In its opinion affirming the district court's order granting a preliminary injunction, however, the Ninth Circuit determined that it was simply enough that the named plaintiffs were all suffering an injury, i.e., in custody, at the time the complaint was filed, even if the injunctive relief could not cure that injury. See Pet. for Cert., App. 6 ["[N]amed plaintiffs in this suit against Riverside County were jail inmates arrested without warrants who had not yet received prompt-probable cause determinations, and were still in custody at the time they filed their complaint. Rather than complaining of a past constitutional violation, plaintiffs in *McLaughlin* were actually suffering the harm for which they sought injunctive relief"]. Yet, the Ninth Circuit's conclusion in this regard is flatly inconsistent with the decisions of this Court which make it clear that, with respect to determining standing to invoke injunctive relief, it is not sufficient that the plaintiff suffered an injury as a result of the alleged improper conduct; rather, the plaintiff must be in a position where injunctive relief would remedy the injury which spawned the lawsuit.

This Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983) is directly on point. In *Lyons*, the plaintiff brought an action for damages and injunctive relief challenging the policy of the Los Angeles Police Department in their use of chokeholds on arrestees, except in situations where deadly force was threatened. In support of his claims, Lyons alleged that he had been stopped by Los Angeles police officers for a Vehicle Code violation, that he had

offered no resistance, and that he was subjected to a chokehold. While the Ninth Circuit had initially determined that Lyons alleged facts sufficient to establish article III standing to seek injunctive relief by asserting that he had been subjected to the challenged chokehold procedure, this Court granted certiorari and reversed. The Court found that regardless of whether plaintiff's constitutional rights had *been* violated by the defendants' alleged illegal chokehold policy, he could not seek injunctive relief absent the allegation that he would again be detained by police officers and be subjected to the alleged improper use of force:

> "Lyons' standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers. Count V of the complaint alleged the traffic stop and choking incident five months before. That Lyons may have been illegally choked by the police on October 6, 1976, while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the city, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." 461 U.S. at 105; 103 S.Ct. at 1667.

Thus, the Court was careful to recognize the distinction between standing for purposes of asserting a damage claim and the standing necessary to assert a claim for injunctive relief; in the latter instance, the plaintiff lacks any personal stake in the litigation absent proof that he or

she will again be exposed to the alleged unconstitutional action:

> "The Court of Appeal . . . asserted that Lyons had a 'live and active claim' against the city 'if only for a period of a few seconds' while the stranglehold was being applied to him and that for two reasons the claim had not become moot so as to disentitle Lyons to injunctive relief. . . . We agree that Lyons *had* a live controversy with the City. Indeed, he still has a claim for damages against the City that appears to meet all Art. III requirements. Nevertheless, the issue here is not whether that claim has become moot but whether Lyons meets the preconditions for asserting an injunctive claim in a federal forum. The equitable doctrine that the cessation of the challenged conduct does not bar any injunction is of little help in this respect for, Lyons' lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as a result of that practice even if continued." 461 U.S. at 109, 103 S.Ct. at 1669.

As the Court recognized in *Lyons*, it has always required a plaintiff seeking equitable relief with respect to an alleged improper law enforcement practice or criminal statute, to demonstrate that he or she would again be subjected to the alleged unconstitutional practice and hence be able to benefit from the relief sought. Thus, in *Golden v. Zwickler*, 394 U.S. 103, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969), this Court reversed a declaratory judgment for the plaintiff invalidating a New York statute that prohibited distribution of anonymous handbills pertaining to election campaigns, based upon the absence of any evidence that the plaintiff would again be subject to prosecution under the statute. Specifically, the plaintiff had

been convicted under the statute with respect to distributing handbills in opposition to the candidacy of a particular Congressman. Since that candidate was subsequently appointed to the bench and thus unlikely to run again, the Court found that plaintiff had failed to establish that he would again necessarily distribute handbills in violation of the statute. See 394 U.S. at 109 ["Since the New York statute's prohibition of anonymous handbills applies only to handbills directly pertaining to election campaigns, and the prospect was neither real nor immediate of a campaign involving the Congressman, it was wholly conjectural that another occasion might arise when Zwickler might be prosecuted for distributing the handbills referred to in the complaint. His assertion in his brief that the former Congressman can be 'a candidate for Congress again' is hardly a substitute for evidence that this is a prospect of immediacy and reality"].

Similarly, in *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674, the Court found that the named plaintiffs lacked standing to prosecute a claim for injunctive relief seeking to correct alleged discriminatory enforcement of criminal laws against the class members. The plaintiffs asserted that a county magistrate and judge subjected class members to particularly severe sentences and inflated bail requirements and committed other acts which resulted in the discriminatory enforcement of laws. The Court noted, however, that the class members did not allege that they were presently subjected to such conduct or that they would again be the victim of these practices. Rather, the prospect of future exposure to the defendants' alleged improper conduct rested "on the likelihood that [plaintiffs] will again be arrested for and charged with

violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners." *Id.* at 496, 94 S.Ct. at 676. Thus, this Court observed that it would be assumed that in the future the plaintiffs "will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." *Id.* at 497, 94 S.Ct. at 677.

In *Ellis v. Dyson*, 421 U.S. 426, 95 S.Ct. 1691, 44 L.Ed.2d 214 (1975), the Court declined to reach the merits of plaintiffs' contention that a Texas statute rendering loitering a crime was unconstitutionally vague. It noted that the criminal proceedings against the plaintiffs had been concluded, and, in the absence of any information concerning whether the plaintiffs would again be subject to prosecution under the statute, the Court could not determine whether the plaintiffs possessed standing under article III. See 421 U.S. at 434, 95 S.Ct. 1696 ["[O]n remand the District Court will find it desirable to examine the current enforcement scheme in order to determine whether, indeed, there is now a credible threat that petitioners, assuming they are physically present in Dallas, might be arrested and charged with loitering. A genuine threat must be demonstrated if a case or controversy within the meaning of article III of the Constitution and of the Declaratory Judgment Act may be said to exist"].

Here, too, the named plaintiffs failed to allege, much less establish, that they would again be subjected to the alleged improper conduct of the County in processing criminal defendants so that injunctive relief would benefit them. As in *Lyons*, the constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as

to the named plaintiffs, concluded at the time the complaint was filed and any relief sought was solely *prospective* in nature. If the named plaintiffs had not yet received a prompt probable cause determination, the County of Riverside could not give them one because, according to plaintiffs' allegations, the time in which to do so had *already* expired. Despite the Ninth Circuit's conclusion, even if the plaintiffs were still in custody at the time the complaint was filed, the mere fact that the injury stemming from the alleged constitutional violation continues cannot provide a basis for injunctive relief if the relief sought does not cure the injury. If that were so, then the plaintiff in *Lyons* would have had standing to assert a claim for equitable relief simply by alleging that he suffered personal injuries by reason of application of the chokehold. Yet, as the Court held in *Lyons*, the existence of a damage claim which may allow redress for injuries resulting from alleged constitutional action is entirely different from a complaint for equitable relief seeking termination of the alleged practice. Standing requires not simply that a plaintiff suffer injury, but that the plaintiff's injury be capable of redress through the relief sought. As this Court noted in *Lewis v. Continental Bank Corp.*, ___ U.S. ___, 110 S.Ct. 1249, 1253, 108 L.Ed.2d 400 (1990): "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and *likely to be redressed by a favorable judicial decision* [citation]", emphasis added; see also *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 38, 96 S.Ct. at 1924 ["(T)he relevant inquiry is whether . . . the plaintiff has shown an injury to himself *that is*

likely to be redressed by a favorable decision"]; emphasis added.

Indeed, requiring a plaintiff seeking injunctive relief to allege facts showing that he or she will benefit from the relief sought is the only way to "assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663, 678. For example, in the instant case, what interest do the named plaintiffs have in vigorously litigating the question of whether individuals who may be arrested *in the future* will receive prompt probable cause determinations which, according to the allegations of their complaint, they did not (and indeed now cannot) receive?

Quite plainly, the only instance in which the named plaintiffs in this action could conceivably benefit from an injunction would be where there were allegations suggesting that the named plaintiffs themselves would again be subject to warrantless arrest and detention without receiving constitutionally prompt probable cause determinations. Yet, the complaint contains no allegation that the named plaintiffs would ever engage in conduct likely to subject them to warrantless arrest and detention. For example, there is no allegation that the named plaintiffs are habitually subject to warrantless arrest without probable cause so as to create a "credible threat" that they would again be subjected to the unconstitutional processes which form the basis of the instant lawsuit. See *Kolender v. Lawson*, 461 U.S. 352, 355, fn. 3, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983) [held, plaintiff possessed standing to assert claim for declaratory judgment and mandatory

injunction barring enforcement of unconstitutionally vague statute allowing police to detain a person for failure to provide adequate identification: "We note that Lawson has been stopped on approximately 15 occasions pursuant to section 647(e) and that these 15 stops occurred in a period of less than two years. Thus, there is a 'credible threat' that Lawson might be detained again under section 647(e)"]; *Ellis v. Dyson*, 421 U.S. at 434, 95 S.Ct. at 1696.[6]

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[6] Moreover, we note that even if plaintiffs could credibly allege that they would again be subject to warrantless arrest without probable cause and detention in the Riverside County jail system, these allegations alone would be insufficient to establish that they would be subject to the alleged unconstitutional conduct of which they complained – being detained in jail for an unconstitutionally lengthy time period prior to receiving a probable cause determination. As the undisputed evidence submitted by the County in the district court indicated and as plaintiffs essentially conceded, a majority of warrantless arrestees are released in 24 hours or less. 2 JA 276-277. Thus, plaintiffs could not credibly allege that they would not necessarily be among the majority of individuals who in fact are not retained in custody following their initial arrest. See *Lyons* at 461 U.S. 108, 103 S.Ct. at 1668 ["But even assuming that Lyons would again be stopped for a traffic or other violation in the reasonably near future, it is untenable to assert, and the complaint made no such allegation, that strangleholds are applied by the Los Angeles police to every citizen who is stopped or arrested regardless of the conduct of the person stopped. We cannot agree that the 'odds' [citation], that Lyons would not only again be stopped for a traffic violation but would also be subjected to a chokehold without any provocation whatsoever are sufficient to make out a federal case for equitable relief"].

The allegations of the Second Amended Complaint make it clear that the named plaintiffs have no stake whatsoever in obtaining injunctive relief in this case. The injunction sought would not result in *their* receiving a prompt probable cause determination, since by their own allegation, the time in which to provide them with such a determination had already passed. Nor is an injunction sought which would result in their immediate release based upon their failure to have received such a determination.[7] In short, the complaint lacks any allegation even remotely suggesting that any of the named plaintiffs would benefit from injunctive relief. Despite the conclusions of the Ninth Circuit and the arguments urged by plaintiffs, the fact that they themselves cannot benefit

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[7] Indeed, as this Court noted in *Gerstein*, a request for injunctive relief seeking a plaintiff's release from custody based upon the failure to have obtained a probable cause hearing would, in and of itself, run afoul of this Court's decision in *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). See 420 U.S. at 107, fn. 6, 95 S.Ct. at 859 ["Because release was neither asked nor ordered, the lawsuit did not come within the class of cases for which habeas corpus is the exclusive remedy"]. See also *O'Shea v. Littleton*, 414 U.S. at 496, 94 S.Ct. at 676 ["(n)either the complaint nor respondents' counsel suggested that any of the named plaintiffs at the time the complaint was filed were themselves serving an allegedly illegal sentence or were on trial or awaiting trial before petitioners. Indeed, if any of the respondents were then serving an assertedly unlawful sentence, the complaint would be inappropriately seeking relief from or modification of current, existing custody. See *Preiser v. Rodriguez*. [Citations.] Furthermore, if any of them were on trial or awaiting trial in state proceedings, the complaint would be seeking injunctive relief that a federal court should not provide. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). . . . "].

from the relief which forms the very focus of this lawsuit underscores their lack of standing under article III.

Nor is plaintiffs' claim saved by invocation of the "capable of repetition yet evading review" doctrine. As a threshold matter, the "capable of repetition yet evading review" doctrine allows a plaintiff who has standing *at the time the case is filed* to continue to pursue the action in spite of the fact that the passage of time has eliminated the facts giving rise to the actual controversy between the parties. The classic example of this is *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), where the plaintiff's challenge to state laws which restricted her right to abortion was no longer a live controversy by the time the case was before this Court, since she was no longer pregnant. Nonetheless, since she had standing at the outset and the problem was capable of repetition and might otherwise evade review, this Court reached the substantive issues underlying the case. Similarly, in a class action context, if the case of the named plaintiff becomes moot, the Court may address the underlying issues so long as some member of the class has a live claim. Indeed, this is precisely the analysis employed by the Court in finding standing in *Gerstein* for purposes of allowing the plaintiffs to seek injunctive relief requiring the State of Florida to enact a mechanism to provide probable cause hearings to warrantless arrestees. While the Court found that the named plaintiff's case was now moot, since he had been convicted, it nonetheless found that the existence of a certified class that by its nature would be subjected to the unconstitutional policy forming the basis of the lawsuit, prevented the action as a whole from becoming moot. *Gerstein*, 420 U.S. at 110, n.

11, 95 S.Ct. 861; see also *Schall v. Martin*, 467 U.S. 253, 256, n. 3, 104 S.Ct. 2403, 2405, n. 3 ["Although the pre-trial detention of the class representatives has long since ended [citation], this case is not moot for the same reason that the class action in *Gerstein* . . . was not mooted by the termination of the claims of the named plaintiffs"]. However, as previously noted, this Court has repeatedly held that a class does not possess standing to prosecute a lawsuit unless a named plaintiff has standing at the time the complaint is filed and the class is certified. See *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 40, fn. 20, *Sosna v. Iowa*, 419 U.S. at 403, 95 S.Ct. at 559. Thus, the doctrine of "capable of repetition yet evading review" does not even come into play with respect to a class action unless the named plaintiffs have already established their standing – the doctrine itself cannot establish their standing.[8]

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[8] In the district court, in the Court of Appeals, and in their opposition to the petition for certiorari in the instant case, plaintiffs have argued that this Court's discussion of mootness in *Gerstein* cited above, is dispositive of the issue of the named plaintiffs' standing to bring the instant action. Yet, plaintiffs' contention does not bear scrutiny. As previously noted, in *Gerstein*, the Court simply assumed that the named plaintiffs had standing at the time the class was certified and focused solely on the question of whether *mootness* of the named plaintiff's claim would moot the action as to the entire class. In addition, *Gerstein* was decided eight years before this Court's decision in *Lyons* clarifying the requirements of article III standing for purposes of seeking injunctive relief. As discussed herein, application of the principles enunciated in *Lyons* to the instant case, makes it clear that the named plaintiffs lack standing to prosecute the instant case for injunctive relief. Hence, this Court's discussion in *Gerstein* (and subsequently *Schall*) with respect to mootness is simply inapplicable to this case.

Moreover, as this Court noted in *Lyons*, the doctrine of "capable of repetition yet evading review" is inapplicable where, as here, it is possible that a plaintiff may litigate the constitutional question involved in the context of a damage claim. *Lyons*, 461 U.S. at 109, 103 S.Ct. at 1669.[9]

As this Court emphasized in *Lewis v. Continental Bank Corp.*, ___ U.S. ___, 110 S.Ct. 1249, 1253: "Article III denies federal courts the power 'to decide questions that cannot affect the rights of litigants in the case before them. . . .' " Since the instant action will in no way "affect the rights" of the named plaintiffs, the federal courts plainly lack jurisdiction to entertain their claim for injunctive relief. Hence, on this ground alone, the district court had no alternative other than to deny the motion for preliminary injunction.

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[9] Indeed, the Seventh Circuit in *Robinson v. City of Chicago*, 868 F.2d 959, 968 (7th Cir. 1989) similarly rejected the "capable of repetition" doctrine in finding that the named plaintiffs lacked article III standing to prosecute an action for injunctive relief seeking accelerated probable cause hearings for pre-trial detention: "Robinson could have achieved the same results as reached here by suing the City for damages; the court's holding that the General Order was unconstitutional would have served as *res judicata* in any subsequent action. Robinson most likely chose not to pursue class-wide damages to avoid the attendant notice requirements, but '[t]here is no need to throw away a venerable constitutional rule just to retain a replaceable champion.' "

II. THE PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED BECAUSE THE COUNTY OF RIVERSIDE'S COMPLIANCE WITH CALIFORNIA PENAL CODE SECTIONS 825 AND 991 IN PROVIDING WARRANTLESS ARRESTEES WITH THE OPPORTUNITY TO RECEIVE PROBABLE CAUSE DETERMINATIONS AT THE TIME OF ARRAIGNMENT, WITHIN TWO DAYS OF ARREST, EXCLUDING WEEKENDS AND HOLIDAYS, CONSTITUTES A CONSTITUTIONALLY PROMPT HEARING UNDER THE FOURTH AMENDMENT, AS INTERPRETED BY THIS COURT IN GERSTEIN V. PUGH.

Plaintiffs sought an injunction against the County of Riverside and its Sheriff, Cois Byrd, requiring defendants to provide persons arrested without a warrant with a probable cause hearing before a magistrate, court commissioner or other judicial officer within 36 consecutive hours of arrest. Plaintiffs argued, and the district court agreed, that such a probable cause hearing was mandated by this Court's decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854 (1975), as well as the Ninth Circuit's decision in *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983).[10] In support of their application for injunctive relief, plaintiffs submitted arrest records that were almost two years old – from 1987 – purporting to show the number of arrested persons who were kept in custody without receiving a prompt probable cause determination. Thus, plaintiffs argued to the district court that in

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[10] In *Bernard*, the Ninth Circuit held that the City of Palo Alto was required to provide warrantless arrestees with a probable cause determination within 24 consecutive hours of arrest. See 699 F.2d at 1025.

order to avoid continued "deprivation of constitutional rights," it was "necessary" that the court issue an injunction.

In response, the County demonstrated by uncontradicted evidence that probable cause determinations were provided to warrantless arrestees at the time of arraignment within two days of arrest, excluding weekends and holidays, pursuant to California Penal Code sections 825 and 991 and the California Supreme Court's decision in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607, interpreting this Court's decision in *Gerstein*. In its November 8, 1989, opinion, the Ninth Circuit expressly held that providing probable cause determinations at arraignment within the time frames provided by California Penal Code sections 825 and 991 "is not in accord with *Gerstein*'s requirement of a determination 'promptly after arrest.'" Pet. for Cert., App. p. 7. In so holding, the Court stated that *Gerstein* required a probable cause determination to be made "as soon as the administrative steps incident to the arrest were completed, and that such steps should require only a 'brief period'" – in this case, 36 consecutive hours after arrest. Thus, in determining the constitutional "promptness" of the probable cause determination, the Ninth Circuit looked *solely* to completion of arrest reports and the like, and ignored the time necessary to provide a warrantless arrestee with an adversarial hearing at arraignment in compliance with California state law.

The Ninth Circuit's determination that the "promptness" of a probable cause hearing turns solely upon completion of the administrative steps incident to arrest, without allowing for delays necessitated by providing an

arrestee with greater constitutional protections and integrating the probable cause hearing into existing pre-trial proceedings, is inconsistent with this Court's decision in *Gerstein* and interprets the Fourth Amendment so broadly as to mandate an entirely separate tier of pre-trial criminal proceedings. The result is an unnecessary restraint on the states in enacting and administrating their criminal justice systems within constitutional boundaries, in direct contravention of the most basic principles of federalism, and the improper injection of the lower federal courts into local criminal justice systems – requiring the courts to evaluate the promptness of probable cause hearings on a county-by-county or even city-by-city basis.

A. The Fourth Amendment Does Not Prohibit Delays In Providing Probable Cause Hearings To Warrantless Arrestees Resulting From The Incorporation Of Such Hearings Into Existing Proceedings That Afford The Arrestees Substantially Greater Constitutional Protections.

Gerstein involved a constitutional challenge to Florida procedures under which criminal defendants charged by a prosecutor's information could be detained for extended periods of time without receiving a judicial determination of the question of whether there was probable cause for arrest and detention. At the time the plaintiffs were arrested Florida law appeared to authorize a preliminary hearing to determine the question of probable cause, but Florida courts had held that if the prosecutor proceeded by information, an arrestee could not obtain a preliminary hearing. See 420 U.S. at 105-106, 95 S.Ct. at 859. Thus, as this Court observed: "Under the

Florida procedures challenged here, a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without *any* opportunity for a probable cause determination." 420 U.S. at 116, 95 S.Ct. at 864; emphasis added. Moreover, even as to those individuals who were not charged by information and hence could receive a probable cause determination at a preliminary hearing, Florida law provided that the preliminary hearing and/or arraignment in which a probable cause determination would be made could be delayed as much as 30 days after arrest. See 420 U.S. at 106, 95 S.Ct. at 859. Nor could a prisoner test probable cause by way of state court habeas corpus. *Id.* Thus, under the Florida procedures at issue in *Gerstein*, a defendant arrested without a warrant would likely not receive a probable cause determination, if at all, until 30 days after arrest.

In affirming the Court of Appeals' determination that the Florida procedures violated the Fourth Amendment, this Court observed that while "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest," once a suspect is in custody "the State's reasons for taking summary action subside," and the "suspect's need for a neutral determination of probable cause increases significantly." 420 U.S. at 113-114, 95 S.Ct. at 863. Thus, this Court held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." 420 U.S. at 114, 95 S.Ct. at 863.

While upholding the Court of Appeals' determination that the Florida procedures violated the Fourth Amendment, this Court nonetheless reversed the lower appellate court's determination that Florida was required to provide probable cause determinations in the context of a preliminary hearing that offered a full-blown adversarial proceeding with accompanying constitutional protections. Noting the restricted focus of a probable cause inquiry, the Court found that "adversary safeguards are not essential for the probable cause determination," since the issue "can be determined reliably without an adversary hearing. The standard is the same as that for arrest. That standard – probable cause to believe the suspect has committed a crime – traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony and the Court has approved these informal modes of proof." 420 U.S. at 120. The Court observed, however, that "[t]his is not to say that confrontation and cross-examination might not enhance the reliability of probable cause determinations in some cases. 420 U.S. at 121-122, 95 S.Ct. at 867. It was concerned, however, that *requiring* states to provide full-blown hearings "could exacerbate the problem of pretrial delay." 420 U.S. at 122, fn. 23, 95 S.Ct. at 867; emphasis added. This was because as "the procedures become more complex the likelihood that it [a probable cause hearing] can be held promptly after arrest diminishes." 420 U.S. at 120.

However, while the Court held that the Constitution did not *require* a full-blown adversary proceeding for probable cause determinations, it nonetheless found that

the states were free to provide such protections within a reasonable time frame. As the Court held:

> "[W]e recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole." 420 U.S. at 123, 95 S.Ct. at 868.

Thus, the Court continued:

> "While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer [citation] or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. In some states, existing procedures may satisfy the requirement of the Fourth Amendment. Others may require only minor adjustment, such as acceleration of existing preliminary hearings." 420 U.S. at 123-124, 95 S.Ct. at 868; fn. omitted.

Significantly, in this regard, the Court noted that the Uniform Rules of Criminal Procedure permitted a person arrested without a warrant to obtain a probable cause hearing "without unnecessary delay" at the first appearance before a magistrate and that the ALI Model Code of Pre-Arraignment Procedure allowed a magistrate to make a probable cause determination at the time of first appearance and that a magistrate was required to make

such a determination within two "court days" of the first appearance. See 420 U.S. at 124, fn. 25, 95 S.Ct. at 868.[11]

In *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207, this Court applied *Gerstein* in rejecting a due process attack on a state statute which allowed juveniles to be detained for a delinquency determination for three, and sometimes as much as six days prior to receiving a probable cause determination. The Court noted that in light of *Gerstein*, this delay was permissible, emphasizing that in *Gerstein* "[w]e did not . . . mandate a specific time table," and in fact had recognized " 'the desirability of flexibility and experimentation by the states.' " 467 U.S. at 275, 104 S.Ct. at 2415. Critical to the Court's determination was the fact that "preventative detention serves an important and legitimate function in the juvenile justice system" (467 U.S. at 272, 104 S.Ct. at 2414), and that the delays occasioned by the process were more than offset by the considerable procedural and substantive protections afforded a detainee at the eventual hearing in which probable cause was determined. As the Court observed:

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[11] In *Gerstein*, the Court referred to the tentative draft of the ALI Model Code of Pre-Arraignment Procedures. The final draft was virtually unchanged from the tentative draft, section 310.1(6) again allowing a magistrate to determine probable cause at the defendant's appearance within 24 hours of arrest, but not *requiring* it to be done until an additional 48 hours later, i.e., within 72 hours of arrest. See ALI Model Code of Pre-Arraignment Procedure (American Law Institute 1975), sections 310.1(6), 310.1(8), and 310.2(2). Indeed, the commentary to section 310 specifically states that the final draft was intended to reflect this Court's decision in *Gerstein*.

"In many respects, the [act] provides far more pre-detention protection for juveniles than we found to be constitutionally required for a probable-cause determination for adults in *Gerstein*." 467 U.S. at 275, 104 S.Ct. 2415. These included the right to counsel, the right to confront and challenge the charges against the juvenile and the ability to cross-examine witnesses. See 467 U.S. at 275-277, 104 S.Ct. at 2416-2417. The Court therefore found nothing inconsistent with the three- and perhaps six-day delay in providing juveniles a probable cause determination under the law in question in light of the fact "[t]he Court in *Gerstein* indicated approval of pretrial detention procedures that supplied a probable-cause hearing within five days of the initial detention," and the "brief delay in the probable cause hearing [here] may actually work to the advantage of the juvenile since it gives his counsel, usually appointed at the initial appearance . . . time to prepare." 467 U.S. at 277, fn. 28, 104 S.Ct. at 2416.

Consistent with *Gerstein* and *Schall*, the Second Circuit in *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988), cert. den. 488 U.S. 1020, 109 S.Ct. 818, 102 L.Ed.2d 807 (1989) expressly recognized that delays resulting from providing pre-trial detainees with greater procedural protections in the context of a more extensive adversarial hearing were not per se unreasonable under the Fourth Amendment. Thus, the Court upheld probable cause determinations conducted at the time of arraignment which, in many cases, did not occur until 72 hours after arrest. The Court found that the delays resulting from providing these more extensive proceedings were reasonable in light of the significant constitutional protections afforded arrestees:

> "[T]he use of arraignment procedures to determine probable cause provides members of the plaintiff class with benefits that would not be available if probable cause were determined through the use of minimal ex parte procedures immediately after the completion of the 'administrative steps incident to arrest.' In particular, the accused is present at the arraignment and has the benefit of counsel in attacking the sufficiency of the charging instrument. More importantly, however, arraignments involve far more than probable-cause determinations. Before arraignment, prosecutors both review the appropriateness of the charge against an arrestee and make a recommendation with regard to the possibility of pretrial release. In addition, the arrestee, with the assistance of defense counsel, may negotiate a final disposition of the arrestee's case at the arraignment. Indeed, over one-third of all cases reach their final disposition at arraignment through dismissals, pleas of guilty, or adjournments in contemplation of dismissal. In the other cases, the court may set bail or other conditions of pretrial release. [p] We believe that the procedural benefits provided to arrestees under New York City's arraignment system justify constitutionally arrest-to-arraignment periods of 72 hours in length." 845 F.2d at 387.

As the Second Circuit recognized in *Williams*, in light of the principles articulated in *Gerstein* and *Schall*, it is simply untenable for plaintiffs to assert and the Ninth Circuit to conclude that it is impermissible for a state or public entity to delay a probable cause hearing based upon the additional time necessary to provide warrantless arrestees with additional constitutional protections afforded by existing pre-trial procedures. While *Gerstein* did not require these additional protections to accompany

the probable cause hearings, it clearly did not forbid them. If anything, as noted above, the Court *invited* states to merge the two procedures and recognized that providing such procedures would necessarily cause some delay.

Quite simply, as this Court recognized in *Gerstein*, and reaffirmed in *Schall*, to the extent a state or public entity elects to conduct probable cause determinations for warrantless arrestees in the context of existing pre-trial procedures which provide the arrestee with additional constitutional protections, as well as a more searching inquiry into not simply the propriety of the arrest, but the validity of charges against the individuals, the delays attending this extended procedure are not per se unreasonable. As we discuss below, consistent with *Gerstein*, and the dictates of the Fourth Amendment, the County of Riverside provides warrantless arrestees the opportunity to receive a probable cause determination at the time of arraignment which, under California law, must be conducted without unnecessary delay and in any event no later than two days following arrest, excluding weekends and holidays. The arraignment procedures provide arrestees with significantly greater constitutional protections than available at the ex parte proceedings imposed by the Ninth Circuit in this case and thus under *Gerstein* and *Schall*, amply justify any slight delay necessitated by providing these more extensive procedures.

B. Consistent With The Fourth Amendment As Interpreted In Gerstein v. Pugh, The County Of Riverside, Within The Framework Of California Law, Has Incorporated Probable Cause Determinations Into Arraignment Proceedings Which By Their Nature Necessitate Some Delay In The Processing Of Arrestees, But Afford Pre-Trial Detainees Additional Constitutional Protections And Avoid The Severe Disruption Of State Criminal Justice Systems Which Would Result From The Creation Of A Separate Tier Of Judicial Proceedings Devoted Solely To Determining Probable Cause.

Following this Court's decision in *Gerstein*, the California Supreme Court expressly addressed the question of precisely when probable cause determinations should be made under California law, consistent with the requirements of the Fourth Amendment as articulated in *Gerstein*. In *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607, an individual arrested without a warrant for committing a misdemeanor filed a petition for habeas corpus asserting he had not been provided with a prompt probable cause determination as required by *Gerstein*. The California Supreme Court denied the petition, finding that the petitioner had received a prompt probable cause determination. In so holding, the Court declared that the constitutional requirements articulated in *Gerstein* would be met if persons arrested for a misdemeanor without a warrant received a probable cause determination at the time of arraignment, which, under California law, must take place without unnecessary delay, and no later than two days after a suspect's arrest. See 15 Cal.3d at 750 ["(t)he determination of probable cause is to be made a matter of record at the time of arraignment or bail setting

which usually takes place simultaneously within two days after a misdemeanor suspect's arrest. . . . [W]e consider arraignment to be the most appropriate stage of the proceedings at which to make a judicial determination of probable cause . . . "]. The California Supreme Court's determination that arraignment would be the most appropriate time in which to conduct a probable cause determination was not surprising in light of the fact that the Court had earlier determined that the issue of probable cause is a matter properly determined upon an individual's first appearance before a magistrate. See *People v. Powell*, 67 Cal.2d 32, 60, 59 Cal.Rptr. 817, 834, 429 P.2d 137 (1967) [first appearance provides opportunity "to place the issue of probable cause for the arrest before a judicial officer . . . "].

In light of the California Supreme Court's decision in *In re Walters*, the California Legislature enacted Penal Code section 991. Section 991 requires an individual arrested for a misdemeanor without a warrant to receive the opportunity for a probable cause determination at the time of arraignment. Appendix, p. 6a. Penal Code section 825, in turn, provides that arraignment must take place without "unnecessary delay" and in no event more than two days after arrest, excluding Saturday, Sunday and holidays with an extension to the next court day if the two days expire at a time when the court is not in session. Appendix, p. 1a. As the California Supreme Court observed in *In re Walters*, under California law arraignment typically constitutes a prisoner's first appearance before a magistrate and the time limits imposed by Penal Code section 825 are intended to comply with the

requirements of article I, section 14, of the California Constitution guaranteeing that all felony arrestees shall be "taken without unnecessary delay before a magistrate."

At arraignment, an arrestee is entitled to be represented by counsel and if he cannot afford an attorney one will be appointed for him. *People v. Carlon*, 161 Cal.App.3d 1193, 1196, 208 Cal.Rptr. 18 (1984); California Penal Code section 987. In addition, the prisoner and his attorney are entitled to inspect all police, arrest and crime reports submitted to the magistrate (Penal Code 859, 1430) and are allowed to examine the formal charge filed with the magistrate. (Penal Code 988.) The magistrate may also set bail at this time, if not previously done. California Const., article 1, section 12; California Penal Code sections 1270-1271. The magistrate then requests and accepts any plea. As noted above, under Penal Code section 991 and *In re Walters*, at arraignment a magistrate may also determine probable cause if requested to do so.[12]

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[12] Plaintiffs have maintained throughout this litigation that while Penal Code section 991 and *In Re Walters* may require probable cause determinations to be made at the time of arraignment in misdemeanor cases, felony arrestees do not obtain a probable cause determination until some 10 court days after arraignment, at the time of preliminary hearing. See California Penal Code § 859b, 871. As previously discussed, the County of Riverside construes *In re Walters* as suggesting that arraignment is the proper time to provide warrantless arrestees with a probable cause determination regardless of the nature of the charges against them, and at the time the motion for preliminary injunction was filed, was following this policy. 1 JA 120-129. While defendants note that neither *Gerstein* nor

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In sum, the California arraignment procedure constitutes the very sort of existing pre-trial state procedure that would best accommodate a probable cause hearing without the necessity of creating an entirely new tier of proceedings. It is marked by precisely those additional constitutional protections and more extensive inquiry that this Court found sufficient to justify a three- to six-day delay in providing probable cause determinations in *Schall*.

Moreover, California law itself guarantees that arraignments be conducted in speedy fashion, thus avoiding unnecessary delay. As noted above, California Penal Code section 825 requires that a defendant must in all cases be taken before a magistrate for arraignment "without unnecessary delay," with an outside two-day time period, excluding Saturdays, Sundays and holidays.[13] Penal Code section 849 specifically requires all

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Schall necessarily rule out a constitutionally proper probable cause determination being made at that the time of a preliminary hearing delayed for as much as 14 days after arrest in light of the considerable protections afforded an arrestee at such hearings, as noted above, throughout this litigation, the County of Riverside has steadfastly agreed to provide such hearings at the time of first appearance before a magistrate at arraignment and not at preliminary hearing. The district court order affirmed by the Ninth Circuit in this case, of course, however, precludes the County from providing such determinations even within the short two-day time period of arraignment.

[13] There is currently a division among the California Courts of Appeal concerning interpretation of the phrase "two

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warrantless arrestees to be taken before a magistrate "without unnecessary delay." Willful failure to do so is punishable as a misdemeanor. Penal Code section 145. California courts, in turn, have narrowly interpreted

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days" in Penal Code section 825. One line of cases interprets the term to mean 48 hours, so that an individual arrested on a Monday between 9:00 a.m. and 4:00 p.m., must be arraigned by the time of arrest on Wednesday. If arrested after 4:00 p.m. on a Monday, for example, at 6:00 p.m., the individual would have to be arraigned by 4:00 p.m., on Thursday – the 48 hours expiring at 6:00 p.m., on Wednesday, a time when "the court in which the magistrate is sitting is not in session," thus extending the period to the "next regular court session of the judicial day immediately following." Penal Code section 825; see *People v. Chambers*, 276 Cal.App.2d 89, 103, 80 Cal.Rptr. 672 (1969), cert. denied, 402 U.S. 999, 91 S.Ct. 2175 (1971); *People v. Lee*, 3 Cal.App.3d 514, 521, 83 Cal.Rptr. 715 (1970); *People v. Ross*, 236 Cal.App.2d 364, 368, 46 Cal.Rptr. 41 (1965); *Youngblood v. Gates*, 200 Cal.App.3d 1302, 1335-1337, 246 Cal.Rptr. 775 (1988) [George, J. dissenting]. Another line of cases interprets the term "two days" to mean two *court* days, so that an individual arrested at 6:00 p.m, on a Monday would have to be arraigned by the close of business on Wednesday – the second day following the arrest upon which the courts are open. See *Youngblood v. Gates*, 200 Cal.App.3d 1302, 246 Cal.Rptr. 775 and cases cited therein. At the time of the hearing on the preliminary injunction, the County of Riverside interpreted the phrase "two days" as 48 hours, so that if the 48-hour period expired at a time when the courts were closed, the probable cause hearing would take place on the next court day. See 1 JA 81. While the case was on appeal, however, the County of Riverside advised the Ninth Circuit that the County was currently using the "two court day" standard enunciated in *Youngblood v. Gates*, 202 Cal.App.3d 1302, 240 Cal.Rptr. 775. In any event, this conflict is largely irrelevant to the instant case as the 36 hour outside period set by the Ninth Circuit would be violated by the County's compliance with either interpretation of section 825.

"unnecessary delay," thus making it clear that the two-day time period is an outside limitation, but that arraignment within that time period does not necessarily mean that the individual is taken before a magistrate without "unnecessary delay." For example, if delay is solely the result of improper actions of law enforcement officials to elicit statements in the absence of counsel or other procedural protections, arraignment within the outside time period of Penal Code section 825 will not be sufficient. See *People v. Powell*, 67 Cal.2d 32, 59-60, 59 Cal.Rptr. 817, 429 P.2d 137 ["We have . . . stressed that section 825 does not authorize even a two-day detention in all cases, but instead places a limit upon what may be considered a necessary delay, and a detention of less than two days if unreasonable under the circumstances, is in violation of the statute"]; *Dragna v. White*, 45 Cal.2d 469, 473, 289 P.2d 428 (1955) [same]. At the same time, however, California courts have recognized that delay inherent in the arraignment procedure itself, i.e., time consumed by investigating and preparing the necessary legal documents, such as the accusatory pleading or waiting opening of the courts themselves, is not per se unreasonable. For example, in *People v. Johnson*, 85 Cal.App.3d 684, 149 Cal.Rptr. 661 (1978), the California Court of Appeal rejected a contention by an individual arrested on Thursday morning, but not arraigned until the following Monday morning, that there was an unnecessary delay within the meaning of section 825, in light of the fact that it was entirely plausible that the delay was caused by the need to investigate and prepare the accusatory pleading accompanying the arraignment:

> "[U]sing the time allowed to prepare and evaluate a case before filing a complaint is not prohibited. Where a delay within the 48-hour period occurs in order to evaluate a case the delay is not unnecessary. [Citation.] There may be other valid reasons for not arraigning an arrested person immediately upon arrest and for using all or the greater part of the 48 hours allowed. Some of those reasons may include study and investigation to make certain that grounds exist to support a criminal complaint. [Citation.] A delay which is occasioned by the conscientious performance of police and which is utilized for the purposes of clerical and administrative needs and not used solely for the purposes of eliciting damaging statements from the accused is not an unreasonable delay." 85 Cal.App.3d at 689.

In light of the significant substantive and procedural protections afforded warrantless arrestees under California law, the County of Riverside plainly does not "unreasonably" delay providing such arrestees with probable cause hearings. Consistent with *In re Walters*, the County of Riverside conducts probable cause determinations for warrantless arrestees at the time of arraignment, i.e., within "two days" of arrest, excluding Saturdays, Sundays and holidays. Prior to arraignment, all arrestees are shown a video advising them of their rights during the arraignment proceeding, including a clear instruction that they are entitled to a probable cause determination at the time of arraignment should they or their attorney desire such a determination. 1 JA 120-129. As review of the booking records submitted by the County in opposition to the motion for preliminary injunction reveals, the County does not unnecessarily delay arraignment for prisoners. Rather, prisoners are arraigned in a reasonable

time frame that allows the procedures necessary to conduct arraignment to be completed, for example, preparation of arrest reports and the filing of a criminal complaint to be reviewed by a judge sitting in open court, as well as securing counsel for defendants and for the People. At the same time, delay does necessarily occur during those time periods in which courts are not in session under California law, i.e., on Saturdays, Sundays and holidays. When courts are again in session, arraignments are promptly conducted. Indeed, as the evidence submitted by plaintiffs in support of the motion for preliminary injunction and defendants' own booking records reveals, those warrantless arrestees subject to extended detention are typically those arrested on a weekend, who must wait until Monday, Tuesday or Wednesday before being taken before a judicial officer.

For example, as review of the County's evidence indicates, individuals arrested with or without a warrant on a Saturday night or early Sunday morning and who are not released on their own recognizance shortly after arrest, typically appear in court by no later than Tuesday and others, in fact, are presented to the magistrate for arraignment Monday. While some arrestees are not presented for arraignment until Wednesday, this is still within the "two day" period provided by California law and there is no evidence to suggest that a delay even to this point is the result of anything more than that which necessarily attends processing hundreds of individuals through a court system that is itself already severely burdened.[14] Indeed, conspicuously, plaintiffs provided no

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[14] Review of the most recent booking statistics submitted to the district court for March 1989 reveals that arraignment

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evidence whatsoever that the County was unnecessarily delaying arraignment. Rather, plaintiffs simply argued and the district court and Ninth Circuit agreed, that any delay caused by incorporating probable cause hearings into arraignment is *per se* unreasonable, since a probable cause determination can be made without providing the additional protections and procedures of a full arraignment hearing. As discussed above, in light of *Gerstein* and *Schall*, this contention is simply untenable.

Consistent with the Fourth Amendment as interpreted by this Court in *Gerstein*, the County of Riverside has incorporated probable cause determinations into arraignment, a pre-trial procedure which itself provides greater constitutional protections and concrete benefits to pretrial arrestees than the cursory ex parte proceedings embraced by the district court and imposed by the Ninth Circuit in this case. While providing such hearings at arraignment may cause some delay, it cannot be assumed that this delay is an improper punishment of those in custody to the extent it is "reasonably related to a legitimate governmental objective. . . . " *Bell v. Wolfish*, 441 U.S.

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proceedings for those arrested with and without warrants typically takes place within two court days of arrest. Of the approximately 70 individuals who were not outright released or sentenced prior to first appearance at arraignment, 23 were arraigned within one court day of arrest (App., pp. 8a-9a), 23 in two court days (App., pp. 9a-10a), and 16 on the third court day (App., p. 10a) – the outside time limit under any interpretation of California Penal Code section 825 (48 hours after arrest, with an extension to the next court day if the period expires when court is not in session). See footnote 13.

520, 539, 99 S.Ct. 1861, 1874, 60 L.Ed.2d 447. There is nothing illegitimate about a public entity's attempt to provide warrantless arrestees with greater procedural and substantive protections at a hearing that may offer benefits beyond a simple determination of probable cause. At the same time, a public entity clearly has a legitimate interest in maintaining an efficient court system avoiding needless multiplicity and duplication of judicial hearings, which unnecessarily consumes judicial time and resources that may slow the process to the detriment of all who pass through it without providing any compensating significant benefit to any category of arrestee.[15]

Moreover, these are precisely the sort of decisions that states and their local entities are best equipped to make. As this Court has cautioned with respect to the inquiries of federal courts into the conditions of pre-trial detention, "[c]ourts must be mindful that these inquiries

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[15] For example, as the County demonstrated in opposition to the motion for preliminary injunction, the 36-hour ex parte probable cause hearings imposed by the district court in an Orange County case, *Scott v. Gates*, from which the 36-hour time period in this case was derived, has not resulted in any significant number of individuals released for lack of probable cause. Despite the figures submitted by plaintiffs in support of their motion for preliminary injunction, after taking into account the fact that arrestees are often released on their own recognizance prior to the hearing officer's review of the arrest report or that initial findings of "no probable cause" are later reversed upon the arresting officer's providing the hearing officer with additional facts to support the arrest, release figures for lack of probable cause run no more than approximately 6%. 2 JA 161.

spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility." *Bell v. Wolfish*, 441 U.S. at 539, 99 S.Ct. at 1874. Similarly, a federal court should not, as the district court and Ninth Circuit did here, essentially substitute their judgment for that of the California Legislature or indeed the local Riverside officials as to both the appropriate form and time frame in which a probable cause determination will be provided to warrantless arrestees. As this Court recognized in *Rizzo v. Goode*, 423 U.S. 362, 378-379, 96 S.Ct. 598, 607-608, 46 L.Ed.2d 561, injunctive relief in these circumstances conflicts with " 'the well-established rule that the Government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs. . . . " ' " As the Court observed in *O'Shea v. Littleton*, 414 U.S. at 502, 94 S.Ct. at 679, "A major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings is in sharp conflict with the principles of equitable restraint which this Court has recognized. . . . "

In the instant case, both the district court and the Ninth Circuit ignored the "special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." *Stefanelli v. Minard*, 342 U.S. 117, 120, 72 S.Ct. 118, 120, 96 L.Ed. 138 (1951); *City of Los Angeles v. Lyons*, 461 U.S. at 112, 103 S.Ct. at 1670. As this Court held in *Gerstein* and reaffirmed in *Schall*, a state is free to incorporate probable cause determinations into existing pre-trial proceedings which, by their very nature, may be delayed for a reasonable period of time, in order to provide an arrestee with

additional constitutional protections and benefits and assure efficient operation of the criminal justice system. Because neither the district court nor the Court of Appeals in this case allowed any reasonable delay occurring as the result of incorporating such hearings into existing procedures to be taken into account, the order granting preliminary injunction was erroneous. Defendants County of Riverside and Cois Byrd therefore request the Court to reverse the judgment of the Ninth Circuit and the district court.

CONCLUSION

For the foregoing reasons, defendants County of Riverside and Cois Byrd request the Court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

Date: November 15, 1990.

Respectfully submitted,

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APPENDIX

California Penal Code

§ 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

After such arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefor, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in any court of competent jurisdiction.

California Penal Code

§ 859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in

which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if

the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. The prosecuting attorney shall deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of the police, arrest, and crime reports, upon the first court appearance of counsel, or upon a determination by a magistrate that the defendant can represent himself or herself. If unavailable to the prosecuting attorney at the time of that appearance or determination, the reports shall be delivered within two calendar days. Portions of those reports containing privileged information need not be disclosed if the defendant or counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible those documents unless otherwise so compelled by law. The court shall not dismiss a case because of the failure of the prosecuting attorney to immediately deliver copies of the reports or to make them accessible for inspection and copying.

California Penal Code

§ 859b. At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none

appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court-day period.

For purposes of this subdivision, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or in Section 11165.6 has occurred and the prosecuting attorney

assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. Any continuance under this paragraph shall be limited to a maximum of three additional court days.

If the preliminary examination is set or continued beyond the 10-court-day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court-day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

(3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant.

(4) The illness of counsel.

(5) The unexpected engagement of counsel in a jury trial.

(6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment or plea, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

California Penal Code

§ 991. (a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

(b) The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three court days.

(c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability.

(d) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. If the court determines that no such probable cause exists, it shall dismiss the complaint and discharge the defendant.

(e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution may refile the complaint.

A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Counsels; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States, – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

BREAKDOWN OF ARRAIGNMENT TIME FOR ARRESTEES IN RIVERSIDE COUNTY CENTRAL JAIL FOR 72 HOURS BETWEEN 0001 HOURS, SUNDAY, MARCH 19, 1989, THROUGH 2400 HOURS, TUESDAY, MARCH 21, 1989

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
1 COURT DAY		
	H112310	2 JA 173
	H116874	2 JA 174
	H116941	2 JA 177
	H116949	2 JA 181
	H116950	2 JA 181
	H116956	2 JA 184
	H117070	2 JA 200
	H117061	2 JA 213
	H117076	2 JA 219-220
	H117084	2 JA 223
	H117092	2 JA 227
	H116884	2 JA 233
	H117363	2 JA 243
	H117375	2 JA 248

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
	H117383	2 JA 252
	H117384	2 JA 25?
	H117390	2 JA 254-255
	H117396	2 JA 257
	H117403	2 JA 261
	H117407	2 JA 262-263
	H117413	2 JA 265
	H117428	2 JA 272
	H117388	2 JA 275
Total	23	
2 COURT DAYS		
	H116940	2 JA 177
	H116948	2 JA 180
	H116961	2 JA 186
	H116967	2 JA 188-189
	H116969	2 JA 189-190
	H116971	2 JA 190
	H116976	2 JA 193
	H090569	2 JA 198
	H112312	2 JA 200
	H112322	2 JA 202
	H112325	2 JA 202
	H116886	2 JA 206
	H117063	2 JA 214
	H117064	2 JA 214-215
	H117079	2 JA 221
	H117083	2 JA 223
	H117356	2 JA 230
	H117370	2 JA 246
	H117379	2 JA 250
	H117380	2 JA 251
	H117402	2 JA 260
	H117427	2 JA 272
	H117433	2 JA 274-275
Total	23	

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
3 COURT DAYS		
	H090560	2 JA 170
	H090563	2 JA 171
	H116939	2 JA 176
	H116968	2 JA 189
	H116979	2 JA 194
	H116880	2 JA 205
	H117090	2 JA 226
	H11357	2 JA 231
	H117358	2 JA 231
	H116889	2 JA 235
	H116899	2 JA 240
	H116901	2 JA 240-241
	H117377	2 JA 249
	H117393	2 JA 256
	H117426	2 JA 271
	H117432	2 JA 274
Total	16	
OVER P.C. 825 PERIOD		
	H116958	2 JA 185
	H116963	2 JA 187
	H116879	2 JA 205
	H117068	2 JA 216
	H117082	2 JA 222
	H116885	2 JA 234
	H117360	2 JA 241
	H117409	2 JA 263-264
Total	8	